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FEDERAL COMMUNICATIONS COMMISSION
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February 3, 2000

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Hand Delivered

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Bell Canada Petition for Declaratory Ruling
IB Docket No. 98-148

Dear Ms. Salas:

Transmitted herewith, on behalf of Bell Canada and pursuant to the Commission's *Public Notice*, DA 99-2981 (released Dec. 21, 1999), in the above-referenced docket, are an original and four copies of Bell Canada's "Reply to Opposition of AT&T Corp."

In the event there are questions concerning this matter, please contact me.

Very truly yours,

R. Edward Price

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
BELL CANADA	)	IB Docket No. 98-148
	)	
Petition for Declaratory Ruling	)	

REPLY TO OPPOSITION OF AT&T CORP.

Bell Canada, by its attorneys, hereby replies to the January 19, 1999, "Opposition of AT&T Corp." to Bell Canada's Petition for Declaratory Ruling ("Petition") in the above-captioned docket. Bell Canada's Petition merely seeks relief for U.S. carriers (i.e., AT&T's competitors) from having to file with the FCC their correspondent agreements with the Bell Canada. AT&T's Opposition completely misses the mark and attempts to muddy the waters with misplaced arguments and statistics concerning Bell Canada's local wireline market share in certain Canadian provinces. As Bell Canada makes clear here and in its Petition, regardless of market share statistics, Bell Canada qualifies for non-dominant treatment under Section 43.51(g)(1)(ii) of the Commission's Rules. The market environment and regulatory regime in Canada effectively eliminates any potential for Bell Canada to affect competition adversely in the United States. Bell Canada should therefore be removed from the dominant carrier list or, alternatively, granted a waiver of the contract filing requirements of Section 43.51.

I. Introduction and Background

In this proceeding, Bell Canada is seeking to be removed from the Commission's "List of Foreign Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets." *See FCC Public Notice*, DA 99-809 (released June 18, 1999). Bell Canada filed its

Petition because the FCC has already deregulated the terms and conditions for service on the U.S.-Canada route by lifting the International Settlements Policy ("ISP"), and the continued inclusion of Bell Canada's name on the dominant carrier list is unnecessary to protect consumers and is only likely to hamper further competition. Alternatively, Bell Canada's Petition sought a waiver of the Commission's contract filing requirements for U.S. carriers' arrangements with Bell Canada because the purpose of that rule is no longer served by enforcing the requirement and, hence, a waiver would be in the public interest.

The delisting Bell Canada requests here is for a very narrow, pro-competitive purpose — namely, to reduce the ability of incumbent carriers, such as AT&T, to use the FCC's processes to gain access to the operating agreements that Bell Canada may execute with other carriers.[1] Even if Bell Canada still has a 50 percent share of any relevant Canadian market (which depends on how the market is defined, *see infra* p. 4), the company lacks sufficient market power anywhere in Canada to affect competition adversely for U.S. long distance services. Thus, there is no clear public interest rationale — and AT&T has advanced none — for requiring all U.S. carriers to continue filing their operating agreements with Bell Canada. Notably, since Bell Canada filed its Petition, the Canadian Radio-television and Telecommunications Commission ("CRTC") has

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[1] In its *Report and Order and Order on Reconsideration*, IB Docket No. 98-148, 14 FCC Rcd 7963, 7982 (1999) , the Commission lifted the ISP along all routes "where U.S. carriers have the ability to settle U.S. traffic at rates that are 25 percent below the benchmark, or less." This includes the U.S.-Canada route, *id.* at 7984-85, where current off-peak settlements are 60 percent below the FCC's benchmark, *see* FCC, *Consolidated Accounting rates of the United States*, Jan. 1, 2000. Even arrangements with Canadian carriers considered "dominant" are therefore not subject to the ISP. The only remaining requirement for such arrangements is that they be filed with the FCC by the U.S. correspondents of "dominant" Canadian carriers. *See* 14 FCC Rcd at 7989-90. Thus, the grant of Bell Canada's Petition would only lift this contract filing requirement for U.S. carriers with termination arrangements with Bell Canada.

found the international services market to be sufficiently competitive such that Bell Canada is no longer required to submit its carrier agreements on the U.S.-Canada route for CRTC approval. *See* Telecom Order CRTC-99-1202, Dec. 22, 1999. The FCC should follow suit.

AT&T's filing is entirely silent about the regulatory consequences of keeping Bell Canada's name on the list. AT&T has also failed to address, much less rebut, Bell Canada's showing that Canadian regulators have opened the Canadian long distance and local exchange markets to competition.[2] More telling, perhaps, is that no other U.S. carrier has sought to block the regulatory relief Bell Canada seeks for U.S. carriers doing business on this route. Thus, there is no longer any reason to maintain Bell Canada on the dominant carrier list when the sole consequence of doing so is to subject its U.S. carrier correspondents to additional regulation that will hamper the type of expanded competition the FCC seeks to promote.

II. Bell Canada Lacks Sufficient Market Power in the Local Access Market in Canada to Affect Competition Adversely in the United States.

Section 43.51(g)(1)(ii) of the Commission's Rules requires that parties seeking to remove a carrier from the dominant carrier list meet one part of a two-pronged test. They must show either "that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route *or* that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market." 47 C.F.R. § 43.51(g)(1)(ii). Bell Canada's Petition shows that it lacks the market power to affect competition adversely in the United States, thus satisfying the second prong. The Petition also

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[2] A further review of the market-opening measures implemented by the CRTC is provided below. *See infra* pp. 6-7.

shows that Bell Canada lacks 50 percent market share in the international transport and inter-city markets in Canada.

In response to these showings, AT&T's Opposition merely argues that Bell Canada's nationwide local market share figures are "irrelevant" and that the proportion of access lines provided in its "local franchise area," which AT&T estimates to be 95 percent, "makes clear that this foreign carrier indisputably continues to possess market power." AT&T Opposition at 3. Contrary to these assertions, the relevant market share to examine is Bell Canada's share of the national market in Canada, not just certain Canadian provinces. The Commission's test in Section 43.51 pertains to local market share "on the foreign end of the route," 47 C.F.R. § 43.51(g)(1)(ii), not merely in certain regions of the country at issue. In this regard, AT&T misstates Commission precedent[3] and ignores the Commission's decision to treat Regional Bell Operating Companies in the United States as non-dominant international carriers, despite their local market share in their respective U.S. regions.[4]

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[3] AT&T cites a case where the FCC determined that Cable & Wireless, Inc. was dominant on the U.S.-China route because of the market power of an affiliated carrier that operated in a region of China. *See Cable & Wireless, Inc.*, 14 FCC Rcd 1863 (1998). That case, however, is inapposite. The ISP has not been repealed on the U.S.-China route, whereas it has been on the U.S.-Canada route given the very low settlement rate (i.e., 60 percent below the benchmark for off-peak traffic, *see supra* note 1). Moreover, in the C&W case the Commission determined that C&W's Chinese affiliate had "sufficient market power in *the greater Chinese market* to affect competition adversely in the United States." 14 FCC Rcd at 1869 (emphasis added). Such a finding plainly could not be made in the case of Bell Canada.

[4] *See Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, 12 FCC Rcd 15756, 15763 (1997); *Order, Authorization and Certificate,* DA 99-2989 (released Dec. 22, 1999) (granting international Section 214 authority to Bell Atlantic as a non-dominant carrier). Once regulators (i.e., the FCC and CRTC) have found that an incumbent LEC's market is open to competition, it is illogical to regard a U.S. incumbent, (continued...)

Having established the national market as the relevant market, it is clear that Bell Canada's nationwide market share of access lines used for long distance services may be even lower than 50 percent.[5] Nevertheless, the company has already demonstrated that, whatever its local market share in certain provinces or in Canada as a whole, the market environment and regulatory framework governing long distance and local competition in Canada prevents it from exercising sufficient market power to affect competition adversely in the U.S. market.

AT&T dismisses Bell Canada's open-market claim as "unfounded." However, AT&T has provided no evidence of its own to challenge the adequacy of Canada's legal and regulatory framework for competition. It contends only that "there is no abundance of options for traffic termination in the local market place because the competitive local market is at a very nascent stage of development" and "that local service providers do not suddenly lose their dominance in a market by the mere adoption of competitive entry rules." AT&T Opposition at 7. But even before the local market in Canada was opened to competitive entry in 1997, U.S. carriers have enjoyed an abundance of options for terminating their Canadian traffic. They have been able to

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[4] (...continued)
such as Bell Atlantic, as non-dominant, but not a Canadian LEC, such as Bell Canada.

[5] As of the second quarter of 1999, there were 6 million wireless subscribers in Canada (in a market of 11.6 million households). Bell Canada's wireless operator, Bell Mobility, had a subscriber market share of only 27 percent, or 1.6 million lines. International Data Corporation (IDC), Canadian Telecommunications Services Report, IDC #99500TEL, *Keep Calling 'Til it (Mega)Herz: The 1999 Canadian Wireless Market,* Sept. 1999, at 5. And there is an estimated total of 18 million access lines in Canada, of which Bell Canada has 58 percent, or 10.4 million lines. *See* The Yankee Group, *Canadian Market Strategies Rep.* (vol. 2, no. 10), Nov. 1998, at 5. Therefore, of some 24 million wireless and wireline local access lines, Bell Canada has a total of 12 million lines, or 50 percent of the market. Since these figures are based on statistics from 1998 and the second quarter of 1999, it is likely that Bell Canada's share of local access lines is now even smaller.

conclude agreements with any one of dozens of competing Canadian interexchange carriers, including AT&T Canada, which can terminate traffic on Bell Canada's local facilities on exactly the same basis as Bell Canada's own long distance business.

As Bell Canada explained in its Petition, the CRTC specifically addressed the issue of potential abuse of market power in the local access market in 1994. *See* CRTC Telecom Decision 94-19, Sept. 16, 1994. This decision established a new Carrier Access Tariff ("CAT") that applies to Canada-U.S. traffic and all other long distance traffic carried on local exchange facilities, including the traffic of incumbent operators. The CAT makes explicit the charges for network access and ensures that the incumbent carriers pay access charges on a basis comparable to their competitors.

Other regulations have been established by the CRTC to ensure that Bell Canada and other incumbent local exchange carriers ("LECs") cannot abuse their local market position to affect competition adversely in the domestic or international long distance market. These include: (1) establishment of a Carrier Services Group to protect competitor information; (2) neutral referrals regarding long distance services for customers contacting LEC business offices; (3) provision of reports (under tariff) of all new subscribers and those changing their addresses; (4) equal access and number portability (with multi-carrier selection capability); (5) consumer safeguards against slamming and constraints on carrier "winback" activities; (6) non-discriminatory access to ancillary services, such as billing and collection (for casual calling) and operator services; and (7) full availability for resale of all incumbent LEC services. Many of these competitive safeguards are well known to the FCC, reflecting the fact that the regulatory

regimes on both sides of the border are quite similar in ensuring competitive safeguards for interexchange carriers and competitive LECs.

Bell Canada set out in its Petition many of the further competitive safeguards that were established with the opening of local markets to competition in 1997. *See* Bell Canada Petition at 7-8. It also has provided ample evidence that competitors, including AT&T Canada, are aggressively entering the Canadian market. *See id.* at 8-9. Indeed, according to market studies, the development of competition in local markets in Canada is at least equivalent to that in the United States.[6] It is therefore apparent that the regulatory regime in Canada effectively precludes Bell Canada from exercising its position in the local market to affect competition adversely in the United States.

III. Bell Canada Lacks 50 Percent Market Share in Canada's International Transport Market and Lacks Sufficient Market Power to Affect Competition Adversely in the United States.

AT&T does not dispute the figures provided by Bell Canada that estimate its nationwide market share for the Canada-U.S. route to be in the 40 percent range.[7] An abundance of facilities

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[6] AT&T suggests, in a footnote, that "the slow development of local competition" may be due to Canadian ownership requirements since foreign operators are "substantially impeded in becoming rivals to Bell and other local service providers." AT&T Opposition at 7 n.16. However, AT&T cites a study showing that new competitors in Canada provided approximately five percent of the total business lines in the Canadian market as of the end of 1998. *See id.* at 6 & n.14. A U.S. research study reports that "[a]t December 31, 1998, new entrants' (CLECs and the local efforts of the large LD companies) revenue share of the estimated $105 B US local telecom market stood at 5.0%." Merrill Lynch, "Telecom Services - Local CLEC Vital Signs: Update for 4Q98 Results and Trends," Mar. 11, 1999, at 2.

[7] AT&T argues that Bell Canada's market share is significantly higher for calls originating in its Ontario and Quebec and that the Canada-U.S. market share of its affiliated carriers in Canada's eastern provinces also should be used to calculate its nationwide market

(continued...)

on both sides of the border and numerous border crossings ensure that there are alternatives to the use of Bell Canada's services or facilities for traffic between any location in the United States and any location in Canada. But even if its market share were more than 50 percent, Bell Canada clearly lacks sufficient market power to affect competition adversely in the United States.[8]

In 1998, Canada's overseas market was opened to facilities-based competition, introducing to other international routes the same degree of competition that has existed on the Canada-U.S. route since 1992. Among the regulatory safeguards that were imposed on all international carriers at that time is a licensing provision which explicitly prohibits Bell Canada or any other licensee from engaging in anti-competitive conduct. *See* CRTC Telecom Decision 98-17, Oct. 1, 1998.

The Canada-U.S. route is not only by far the largest but also the most competitive route in the world, which is reflected by settlement rates that probably are the lowest in the world.[9]

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[7] (...continued)
share. *See* AT&T Opposition at 8-9. As pointed out earlier, however, the relevant market is indeed the nationwide market in Canada. *See supra* notes 3-4 and accompanying text. Moreover, AT&T contradicts itself in suggesting that, on the one hand, the relevant market should be defined as Ontario and Quebec for the purposes of local access market share but that, on the other hand, the FCC should include traffic originating outside that area for international transport.

[8] AT&T does not dispute the 1997 CRTC Decision cited by Bell Canada which confirmed that the long distance market, including the Canada-U.S. market, was sufficiently competitive to warrant regulatory forbearance. *See* Bell Canada Petition at 5-6 & nn.17, 19. AT&T provides no evidence to suggest why the CRTC, after an extensive public hearing, erred in reaching this decision.

[9] Settlement rates for off-peak switched voice traffic in Canada are currently $.06 per minute, or 60 percent lower than the FCC's settlement rate benchmark of $.15 per minute. *See supra* note 1. (In order for the ISP to be lifted on a given route, the FCC requires only that (continued...)

This has been the result of similar regulatory policies introduced over the years, first in the United States and then in Canada, that have ensured open competition in the long distance market and continue to safeguard competition in that market while local competition develops. AT&T's Opposition flies in the face of the market realities along the Canada-U.S. border. To deny Bell Canada's Petition would mean calling into question the regulatory framework that, in both countries, has successfully opened international and domestic long distance markets to competition and is now ensuring that safeguards exist to permit the evolution towards fully competitive local markets.

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[9] (...continued)
U.S. carriers be able to settle traffic at rates that are 25 percent below the benchmark. *See id.*)

IV. Conclusion

For the foregoing reasons, AT&T's Opposition should be denied, and Bell Canada's Petition granted forthwith under the second prong of Section 43.51(g)(1)(ii). Alternatively, the Commission should waive the Section 43.51 contract filing requirement for U.S. carriers that correspond with Bell Canada because the public interest in robust competition on the U.S.-Canada route would be better served.

Respectfully submitted,

BELL CANADA

By: _____

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February 3, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2000, true and correct copies of the foregoing "REPLY TO OPPOSITION OF AT&T CORP." were served by hand delivery (*) or first class U.S. mail, postage prepaid, on the following parties:

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